IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10173 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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K.N.SHAH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JAYRAJ CHAUHAN for Petitioner(s) : 1,
MR AY KOGJE AGP for Respondent(s) : 1, 3,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/01/2007

ORAL JUDGMENT

1. Mr.Jayraj Chauhan, learned counsel for the petitioner and Mr.A.Y. Kogje, learned Assistant Government Pleader for State.

2. The petitioner, being aggrieved by the order

dtd.14/5/1993 passed in Case No.SSRD/BKP/BK/Suo-motu/1 of 1993, where-under the State Government has cancelled the order No.C-1/Land/BK/Vashi/447 dtd.21/2/1992 where-under, the District Development Officer had granted permission to use the land for commercial purpose.

3. Short facts necessary for disposal of the present writ application are that the petitioner had purchased certain land and, thereafter, made an application to the District Development Officer for change of the user for part of the land from residential to commercial. The application was rejected on the ground that it was incomplete. The petitioner, thereafter, filed yet another application and submitted to the authority that permission for commercial use be allowed in favour of the petitioner. The District Development Officer, after hearing the parties, allowed the application and directed the petitioner to deposit an amount, equivalent to 40 times of the revenue assessment of the land and granted the permission on 21/2/1992.

4. It appears that, thereafter, the matter came to the notice of the State Government, the Secretary (Appeals), Revenue Department issued necessary notices to the

petitioner, gave an opportunity of hearing and held that on the date when the permission was accorded in favour of the petitioner, the District Development Officer had lost his jurisdiction, because, the property fell within the municipal area. After setting aside the order passed by the District Development Officer, the said revisional authority referred the matter to the Collector for making a decision in accordance with law. On 12/7/1994, the Collector, Banaskantha issued a notice to the petitioner to show cause that why the land be not forfeited in favour of the State.

5. Being aggrieved by the order passed by the revisional authority and notice issued by the State Government, the petitioner is before this Court.

6. Mr.Jayraj Chauhan learned counsel for the petitioner submits that the order passed by the State Government is patently illegal but assuming the same to be valid, the Collector could not issue any notice to the petitioner in relation to forfeiture unless he decided against the interest of the petitioner. He submits that present is a case where the District Development Officer, under some bona fide impression, granted the permission and under the said permission, the petitioner has spent a good

fortune in developing the concerned area.

7. Mr.Kogje, learned Assistant Government Pleader for the State, on the other hand, submits that the District Development Officer might have acted under the bona fide belief, but that belief would not confer any jurisdiction upon him. He submits that the order passed by the State Government is legal and does not call for any interference.

8. Sec.65 of the Bombay Land Revenue Code (“the Code” for short) provides that if any occupant wishes to use his holding or any part thereof for any other purpose, the Collector's permission shall in the first place be applied for by the occupant. The Collector, after receipt of the application, shall acknowledge it and after due inquiry, either grant or refuse the permission applied for. The Collector would be required to dispose of the application within a period of three months. If the orders are not passed within a period of three months, then, it would be deemed that such application is granted. Sec.65-A of the Code provides that where the occupant of any land held for any non-agricultural purpose wishes to use such land or part thereof for any other non-agricultural purpose, Collector's permission shall be applied for and the

provisions of sec.65 shall so far as may be applied to such application.

9. In the present case, an application for change of the user from one non-agricultural to another non-agricultural purpose was required to be made to the Collector and if such application was made to the District Development Officer, even under a bona fide belief, the District Development Officer could not assume the jurisdiction and decide the application. The order passed by the State on these facts would not call for any interference.

10. The question, still, would be that whether the Collector before finally deciding the application could issue any notice to the petitioner and propose forfeiture. In the opinion of this Court, when the State Government had referred the matter to the Collector, then he was first required to decide the application and only, thereafter, could make an order of forfeiture or otherwise. Issuance of the notice dtd.12/7/1994 much before the decision on the petitioner's application would not be a valid notice. The impugned notice dtd.12/7/1994 deserves to and is accordingly quashed.

11. The petitioner shall be free to appear before the Collector and require the Collector to decide his

application for change of the user (sent by the State Government after setting aside the order passed by the District Development Officer).

12. The petitioner would be free to raise all the questions before the District Collector including the question that after obtaining the permission, he had spent a good fortune for development of the land and under the bona fide belief, if the District Development Officer had granted the permission, the Collector should also grant the permission and that in accordance with sec.65 of the Code, if the order was not passed within a period of three months from the date of receipt of the records under the orders of the State Government, present would be a case of deemed permission.

13. The petitioner may appear before the Collector, Banaskantha on 12/2/2007 with a copy of this order. After the petitioner's appearance and receipt of the copy of this order, now tobe filed by the petitioner, the Collector shall dispose of the application in accordance with law.

(R.S. GARG, J.)

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